

## REMARKS

This Response is to the Final Office Action dated June 6, 2007 and the personal interview granted courteously to Applicants' representative on September 12, 2007. Claims 1 to 191 are pending.

A Petition for a Two Month Extension of Time and Request for Continued Examination ("RCE") has been submitted herewith. Please charge Deposit Account No. 02-1818 for the costs of the Two Month Extension of Time, RCE and any other fees deemed owed.

Claims 1 to 5, 7 to 11, 14 to 24, 26 to 29, 32 to 34, 41 to 44, 45 to 49, 51 to 55, 58 to 71, 73 to 77, 80 to 91, 93 to 103, 106 to 110, 113 to 118, 120 to 124, 126 to 137, 139 to 150, 152 to 154, 160 to 162, 164 to 170, 172 to 178, 180 to 187 and 189 to 191 were rejected under 35 U.S.C. §102(e) as being unpatentable over U.S. Patent No. 7,051,120 to Greene et al. ("*Greene*"). Claims 6, 25, 50, 72 and 119 were rejected under 35 U.S.C. §103(a) as being unpatentable over *Greene* in view of U.S. Patent No. 5,960,085 to de la Huerga ("*de la Huerga*"). Claims 12 to 13, 30 to 31, 56 to 57, 78 to 79, 92, 104, 105, 111 to 112, 125, 138, 151, 155 to 159, 163, 171, 179 and 188 were rejected under 35 U.S.C. §103(a) as being unpatentable over *Greene*, *de la Huerga* and further in view of U.S. Patent Publication No. 2001/0049608 to Hochman ("*Hochman*").

The Office Action dated June 6, 2007 concluded that the Affidavits by inventors Tuan Bui and James Martucci submitted with the Response dated March 26, 2007 were ineffective to overcome the *Greene* reference. More specifically, the Office Action concluded that the Affidavits were ineffective because: 1) the evidence submitted was insufficient to establish conception; 2) the Affidavits show a chain of diligence, but do not provide evidence of the communications (e.g. emails, telephone, fax records) establishing such diligence; and 3) an affidavit from the third named inventor is missing.

### Examiner Interview

During the interview dated September 12, 2007 Applicants' representatives, Eric M. Williams and Jason A. Engel, and Examiner Cobanaglu and Gilligan discussed the effectiveness of the Affidavits submitted with the Response dated March 26, 2007. The Examiners stated, as evidenced by the Interview Summary Record dated September 9, 2007, that the Affidavits

establish conception. Applicants' representatives and the Examiners disagreed with respect to the evidence required to establish reasonable due diligence from before the effective date of *Greene* to the filing date of the present application. In the spirit of compromise, Applicants' representatives nevertheless agreed to submit Supplemental Affidavits with redacted copies of the communications supporting reasonable due diligence. The Examiners and Applicants' representatives further discussed the Office Action's requirement of an affidavit from the third named inventor, which is discussed in more detail below under the section Response to Office Action Requirement of Affidavit from the Third Inventor.

Rejections of Claims under 35 U.S.C. § 102(e)

Claims 1 to 5, 7 to 11, 14 to 24, 26 to 29, 32 to 34, 36 to 40, 41 to 44, 45 to 49, 51 to 55, 58 to 71, 73 to 77, 80 to 91, 93 to 103, 106 to 110, 113 to 118, 120 to 124, 126 to 137, 139 to 150, 152 to 154, 160 to 162, 164 to 170, 172 to 178, 180 to 187, and 189 to 191 were rejected under 35 U.S.C. § 102(e) as being anticipated by *Greene*. Applicants traverse this rejection.

*Greene* qualifies as prior art only under 35 U.S.C. § 102(e). As such, *Greene* can be sworn behind under 37 C.F.R. § 1.131. Applicants do not believe that *Greene* anticipates the rejected claims, however, Applicants submit two Supplemental Affidavits under 37 C.F.R. § 1.131 to establish invention of the subject matter of the rejected claims before the effective date of *Greene*. The effective date of *Greene* is December 28, 2001. As agreed upon by the Applicants' representatives and Examiners Cobanaglu and Gilligan during the interview, the Affidavits by inventors Tuan Bui and James Martucci submitted with the Response dated March 26, 2007 establish invention (i.e., conception) of the subject matter of the rejected claims at least as early as November 30, 2001, which is before the effective date of *Greene*. As such, the Supplemental Affidavits submitted herewith, which provide no less evidence than the Affidavits submitted March 26, 2007, are also sufficient to establish invention of the subject matter of the claims at least as early as November 30, 2001.

In addition, Applicants exercised reasonable due diligence from before the effective date of *Greene* to the filing date of the present application. The present application was filed on January 29, 2002, less than one month after the effective date of *Greene*. The Supplemental Affidavits of inventors Tuan Bui and James Martucci each show that they met with their

attorneys to discuss the preparation and the subject matter of the present application on December 14, 2001, before the effective date of *Greene*. The Supplemental Affidavits also show that inventors Tuan Bui and James Martucci each received a draft of the present application from their attorneys on or about January 3, 2002. The Supplemental Affidavit of inventor James Martucci shows that he reviewed the draft patent application and provided his attorneys with his comments regarding the draft patent application on January 14, 2002. The Supplemental Affidavit of inventor Tuan Bui shows that he was copied on the January 14, 2002 correspondence from inventor James Martucci regarding the draft patent application. After receiving inventor James Martucci's comments on January 14, 2002, Applicants' attorneys filed the present application shortly thereafter on January 29, 2002. As such, Applicants exercised reasonable due diligence from before the effective date of *Greene* to the filing of the present application.

Applicants have established invention of the subject matter of rejected claims 1 to 5, 7 to 11, 14 to 24, 26 to 29, 32 to 34, 36 to 40, 41 to 44, 45 to 49, 51 to 55, 58 to 71, 73 to 77, 80 to 91, 93 to 103, 106 to 110, 113 to 118, 120 to 124, 126 to 137, 139 to 150, 152 to 154, 160 to 162, 164 to 170, 172 to 178, 180 to 187, and 189 to 191 before the effective date of *Greene* coupled with reasonable due diligence to the filing date of the present application. Therefore, Applicants respectfully request that the rejection under 35 U.S.C. § 102(e) be withdrawn.

First Rejection of Claims under 35 U.S.C. § 103(a)

Claims 6, 25, 50, 72, and 119 were rejected under 35 U.S.C. §103(a) as being unpatentable over *Greene* in view of *de la Huerga*. Applicants traverse this rejection.

Applicants do not believe that the rejected claims are obvious in view of the combination of *Greene* and *de la Huerga*. As discussed above, however, Applicants hereby submit Supplemental Affidavits of inventors Tuan Bui and James Martucci which establish invention of the subject matter of the rejected claims before the effective date of *Greene* coupled with reasonable due diligence to the filing of the present application.

Because *de la Huerga* alone does not teach or suggest the subject matter of the rejected claims, Applicants respectfully request that the rejection of claims 6, 25, 50, 72, and 119 under 35 U.S.C. § 103(a) be withdrawn.

Second Rejection of Claims under 35 U.S.C. § 103(a)

Claims 12, 13, 30, 31, 56, 57, 78, 79, 92, 104, 105, 111, 112, 125, 138, 151, 155 to 159, 163, 171, 179, and 188 were rejected under 35 U.S.C. 103(a) as being unpatentable over *Greene* in view of *de la Huerga* and further in view of *Hochman*. Applicants traverse this rejection.

Applicants do not believe that the rejected claims are obvious in view of the combination of *Greene*, *de la Huerga*, and *Hochman*. As discussed above, however, Applicants hereby submit Supplemental Affidavits of inventors Tuan Bui and James Martucci which establish invention of the subject matter of the rejected claims before the effective date of *Greene* coupled with reasonable due diligence to the filing of the present application.

Because *de la Huerga* and *Hochman* do not teach or suggest the subject matter of the rejected claims, Applicants respectfully request that the rejection of claims 12, 13, 30, 31, 56, 57, 78, 79, 92, 104, 105, 111, 112, 125, 138, 151, 155 to 159, 163, 171, 179, and 188 under 35 U.S.C. § 103(a) be withdrawn.

Response to Office Action Requirement of Affidavit from the Third Inventor

The Office Action and the Interview Summary Record require: 1) an affidavit from the third named inventor, or 2) an indication of which claims are the sole invention of inventors Tuan Bui and James Martucci. See, Office Action, pg. 5; Interview Summary Record. Applicants submit that the Supplemental Affidavits submitted by inventors Tuan Bui and James Martucci are sufficient because the third named inventor, Dan Mihai, refuses to sign a declaration and inventors Tuan Bui and James Martucci are joint inventors of each of claims 1 to 191, as stated in the Affidavits submitted in the Response dated March 26, 2007 and again in the Supplemental Affidavits submitted herewith. Where a joint inventor refuses to sign an affidavit or declaration, the signatures of the remaining inventors is sufficient. See, M.P.E.P § 715.04; *In re Carlson* 79 F.2d 900, 905 (CCPA 1930). Dan Mihai was contacted on October 26, 2007 regarding the subject matter of the present application and the outstanding Office Action. Dan Mihai responded on October 29, 2007 and indicated his refusal to cooperate with respect to the subject matter of the present application and the outstanding Office Action. Accordingly, Applicants respectfully submit that the Office Action requirement of an affidavit from the third

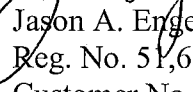
named inventor is rendered moot and respectfully submit that the Affidavits by the inventors Tuan Bui and James Martucci are sufficient to swear behind *Greene* for at least the reasons set forth above. See, M.P.E.P. § 715.04. If the Examiners believe that further information is required regarding the third named inventor's refusal to sign, Applicants are willing to provide such information and invite the Examiner to contact the undersigned regarding same.

In view of the above, Applicants respectfully submit that this case should be in condition for allowance. Examiner is invited to contact the undersigned Attorney for the Applicants via telephone if such communication would expedite the allowance of this application. Again, the Commissioner is hereby authorized to charge Deposit Account No. 02-1818 for any fees which are due and owing.

Respectfully submitted,

BELL, BOYD & LLOYD LLP

BY

  
\_\_\_\_\_  
Jason A. Engel  
Reg. No. 51,654  
Customer No. 29200

Dated: October 31, 2007